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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975
No. 75-728

MARK ROSENSTOCK,

Petitioner,

vs.

DALE ROSENSTOCK,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TOPICAL INDEX

		Page
Table of Authorities		iii
NO CONSTITUTIONAL QUESTIONS ARE PRESENTED		2
STATEMENT OF CASE		2
ARGUMENT		4
I	FULL FAITH AND CREDIT IS NOT AN ISSUE	4
II	A CONSTITUTIONAL DUE PROCESS ISSUE IS NOT STATED	5
A.	Petitioner's Arguments Raise "Factual" Not Legal Issues.	5
B.	Petitioner's Arguments Concern State Law, Not Infringement of Constitutional Rights.	6
C.	Respondent Was Only Required to Comply with California Services of Process Requirements.	6

D. Respondent Was Found to Be Residing and Domiciled in California for the Requisite Period. 7

III PETITIONER WAS ACCORDED A FAIR AND IMPARTIAL HEARING 7

A. Burden of Proof 7

B. Choice of Law 8

C. Petitioner Was Given an Impartial and Fair Trial 9

CONCLUSION 10

TABLE OF AUTHORITIES

Cases	Page
Armstrong v. Armstrong, 350 U.S. 568, 76 S.Ct. 629	5
Buskuhl v. Family Life Insurance Co., 271 Cal.App.2d 514, 76 Cal. 76 Cal.Rptr. 602	9
Vanderbilt v. Vanderbilt, 354 U.S. 416, 77 S.Ct. 1360	5

Statute	
California Code of Civil Procedure, §§412 and 413 (now repealed)	3

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TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The Petition for Writ of Certiorari should be summarily denied for the following reasons:

NO CONSTITUTIONAL QUESTIONS ARE PRESENTED

Petitioner contends that the California decisions raise important constitutional questions. Respondent strongly disagrees and submits that Petitioner's Brief is merely an attempt to have this Court reweigh evidentiary matters. The Petition presents fictional and feigned constitutional issues and is frivolous.

Ordinarily, because of the frivolous questions asserted in the Petition for Certiorari, Respondent would have waived her right to file a reply. However, because of the twisted, distorted, untrue and unsupported allegations made by Petitioner and his counsel, Respondent feels judicially obligated to file a brief response.

STATEMENT OF CASE

The underlying purpose of the Petition is evident in the Petitioner's presentation and "Statement of the Case," pages 6-14. Petitioner begins his statement by stating that he does not ask this Court to reweigh the evidence and that he will substantially rely upon undisputed facts. However, contrary to Petitioner's suggestion, he transgresses into an unsupported factual presentation which is contrary to the findings of the trial court as affirmed by the California Court of Appeal. Petitioner

compounds his misdeeds by failing to cite the record as required by the rules of this Court. This is because the record and findings below are directly opposite to Petitioner's assertions.

Contrary to Petitioner's statement of the case, the trial court found, on substantial evidence, that (1) from June, 1966, to the time Respondent's cause of action for divorce arose, Petitioner was domiciled in California; (2) from June, 1966, through the date of trial, Respondent and the children were domiciled in California; (3) Respondent's action for divorce arose from Petitioner's cruel conduct to Respondent in California; (4) on January 6, 1970, the Petitioner was personally served with a copy of the Summons and Complaint and on said date the Los Angeles Superior Court acquired personal jurisdiction over the Petitioner; (5) personal service on Petitioner was in compliance with California Code of Civil Procedure, Sections 412 and 413 (now repealed); (6) Petitioner had actual notice and knowledge of the California divorce proceedings and had an adequate opportunity to contest the same; and (7) that the California judgment was a valid judgment personally binding the Petitioner to pay the ordered amounts of spousal support, child support and attorney fees (C.T. pp. 97-106).

The trial court further found that on March 3, 1970, Petitioner wrongfully abducted the parties' minor child from a school ground in Beverly Hills, California, and unlawfully withheld and concealed the child until

Respondent signed the purported Stipulation and Agreement; that Petitioner would not return the child until and unless Respondent signed said Agreement; that Respondent would not have signed said Agreement except for Petitioner's acts; that said Agreement was signed by Respondent under duress and undue influence; and that said acts of Petitioner inflicted severe emotional distress, suffering and anxiety to the person of Respondent (C.T. pp. 100-106).

Accordingly, Petitioner's characterization of the facts on pages 6-14 is contrary to the findings of the trial court. Petitioner's attempts to have this Court reweigh the evidence using the "pretense" of constitutional questions should be summarily dismissed and denied.

ARGUMENT

I
FULL FAITH AND CREDIT IS NOT AN ISSUE

Petitioner attempts to frame a constitutional issue by contending that the California courts refused to give full faith and credit to the ex parte New York divorce decree. This question is new and was never raised by Petitioner in the trial court or California Appellate Courts. Furthermore, the trial court expressly recognized such decree holding

that it affected the marital status only, and did not and could not adjudicate Respondent's rights to spousal support and child support under the law of her domicile. Vanderbilt v. Vanderbilt (1957) 354 U.S. 416, 77 S.Ct. 1360; Armstrong v. Armstrong (1956) 350 U.S. 568, 76 S.Ct. 629.

In arguing a full faith and credit denial, the Petitioner again relies on his "opinion" of the evidence. He ignores and fails to mention the findings of the trial court. The New York decree was not inpersonam. Respondent was found to be domiciled and residing in California; was not served in New York, and did not personally appear in that action (C.T. pp. 97-106).

II

A CONSTITUTIONAL DUE PROCESS ISSUE IS NOT STATED

A. Petitioner's Arguments Raise "Factual" Not Legal Issues.

The heart of Petitioner's contentions in Argument, Point II, concern evidentiary matters that were decided adversely to him. The trial court made its findings based on substantial but conflicting evidence. They should not be

rewighed.

B. Petitioner's Arguments Concern State Law, Not Infringement of Constitutional Rights.

Point II of Petitioner's Argument is confined to Respondent's required compliance with state not constitutional law. They do not raise a single issue, expressly or impliedly, regarding infringement of Petitioner's constitutional rights. Point II makes clear the patently frivolous nature of the Petition.

C. Respondent Was Only Required to Comply with California Services of Process Requirements.

Point II, A., of the Petition, is ludicrous! Petitioner contends that Respondent should have followed New York service of process laws for her California divorce proceedings. Contrary to the ill-founded and illogical beliefs of Petitioner's counsel, Respondent was required to and did comply with California law relating to service and notice to Petitioner. (See Opinion of the Court of Appeal of the State of California, Appendix to Petition, page 12a.)

D. Respondent Was Found to Be Residing and Domiciled in California for the Requisite Period.

Petitioner's Argument II, B., is again based on his dissatisfaction with the findings of the trial court. It is his opinion that the evidence showed that Respondent did not satisfy the residency requirements before filing her California action. Based on substantial evidence, the trial court found that Respondent had been domiciled in California and in Los Angeles County since June, 1966. This satisfied the one (1) year or six (6) month period, whichever was applicable.

III

PETITIONER WAS ACCORDED A FAIR AND IMPARTIAL HEARING

A. Burden of Proof

Petitioner's argument concerning the burden of proof is clearly frivolous. The Respondent first filed her action for declaratory relief and damages regarding the California decree and wrongful acts by the Petitioner. Petitioner filed a Cross-Complaint relying on

on the validity of a Stipulation and Agreement, which puprotedly gave him immunity from suit in California (C.T. pp. 80-92). Respondent then filed a separate action to declare said Agreement void and unenforceable. Petitioner filed another Cross-Complaint again raising the issue of said Agreement (C.T. pp. 171-183).

Prior to trial, Petitioner filed a motion to bifurcate the issues for trial and to have the validity of the Stipulation tried first (C.T. p. 896). It was Petitioner's contention that if the court upheld said Agreement, the remaining issues would not have to be tried. This motion was granted by the trial court. Because the Petitioner moved for such bifurcation and relied upon said Agreement, the court directed the Petitioner to sustain the validity of the Agreement. Petitioner cannot now complain.

B. Choice of Law

Petitioner has now infused the case with a "Choice of Law" question never raised in the trial court or courts of appeal of California. Apparently, Petitioner is now arguing that the trial court should have applied the law of New York in ruling on the validity of the purported Stipulation and Agreement. Choosing New York law, Petitioner argues would have resulted in a finding of validity. Petitioner's argument is contrary to the law and the findings of the trial court relative to

his duress and undue influence. Petitioner would have this Court ignore his wrongful acts in abducting and sequestering the child on the theoretical premise that New York law should have been applied.

Under California's Choice of Law rules, no mechanical tests are applied in determining what law applies. Accordingly, depending on the interests of California, it will apply its laws concerning the validity of contractual provisions notwithstanding the place of making was another state. Buskuhl v. Family Life Insurance Co. (1969) 271 Cal.App.2d 514, 76 Cal.Rptr. 602.

Whether the law of New York or the law of of California applied, the result would have been the same: The acts of Petitioner in holding the minor child as ransom to extract an unconscionable bargain were unlawful and wrongful thereby making the Agreement voidable.

C. Petitioner Was Given an Impartial and Fair Trial

Petitioner objects to the trial court's sustaining of objections to certain questions and documents as denying him procedural due process. Each of these objections were sustained on well-established evidentiary grounds. Much of the objectionable evidence was irrelevant, incompetent or cumulative.

CONCLUSION

Based on the foregoing, it is respectfully requested that the Petition for Writ of Certiorari be summarily denied.

Respectfully submitted,

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